

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROYAL WILSON LETHAM,

Defendant-Appellant.

UNPUBLISHED

June 12, 2007

No. 269789

Wayne Circuit Court

LC No. 05-012397

Before: Fitzgerald, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Defendant appeals of right from his conviction of unarmed robbery, MCL 750.530, for which he was sentenced to three to five years' imprisonment. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that he was deprived of due process of law because there was insufficient evidence to support his conviction of unarmed robbery. Specifically, he claims that because his theft of liquor from a Meijer store occurred without violence, or the threat of force, or by putting a victim in fear, he was not guilty of the crime of unarmed robbery. He asserts that the law requires an application of force contemporaneous with the larceny to elevate the crime to unarmed robbery, and that there was no evidence showing either contemporaneous force or violence, or that anyone was placed in fear of an immediate battery. Defendant claims that the prosecution, at most, proved that he committed a larceny in a building.¹

This Court reviews a conviction de novo, *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002), to determine if it is supported by sufficient evidence by "view[ing] the evidence in a light most favorable to the prosecution and determin[ing] whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992), citing *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979).

¹ We note that defendant could not have been convicted of larceny in a building because of the statutory restriction imposed by the retail fraud statute, either second or third degree, MCL 750.356d(3) and (5), that precludes anyone who commits the crime of retail fraud in the second degree or retail fraud in the third degree from being prosecuted for larceny in a building.

The elements of unarmed robbery are: “(1) a felonious taking of property from another, (2) by force or violence or assault or putting in fear, and (3) being unarmed.” *People v Johnson*, 206 Mich App 122, 125-126; 520 NW2d 672 (1994). Since July 1, 2004,² the unarmed robbery statute has provided that:

(1) A person who, *in the course of committing a larceny of any money or other property that may be the subject of larceny*, uses force or violence against any person who is present, or who assaults or puts the person in fear, is guilty of a felony punishable by imprisonment for not more than 15 years.

(2) As used in this section, “in the course of committing a larceny” includes acts that occur in an attempt to commit the larceny, or during commission of the larceny, *or in flight or attempted flight after the commission of the larceny*, or in an attempt to retain possession of the property. [MCL 750.530 (emphasis added).]

The theft in this case occurred on November 21, 2005. This was after the effective date of the amended statute and so the amendment applies to defendant’s conduct.

Defendant took several expensive bottles of liquor and concealed them in a cardboard box. “[L]arceny is complete when the taking occurs.” *People v Randolph*, 466 Mich 532, 543; 648 NW2d 164 (2002). He then attempted to leave the store with the box and without paying for the liquor. Defendant was confronted as he was leaving the store. He then used force or violence (striking two store employees) to break free and allow him to flee. Defendant was not armed when he committed these acts. Defendant’s assaultive behavior occurred “in flight or attempted flight after the commission of the larceny.” MCL 750.530(2). The amended statute has eliminated the restriction that the application of force or violence must occur contemporaneous with the larcenous taking. Hence, there was sufficient evidence to support defendant’s conviction of unarmed robbery.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ David H. Sawyer
/s/ Peter D. O’Connell

² The unarmed robbery statute was amended by the Legislature, effective July 1, 2004, apparently in reaction to our Supreme Court’s decision in *People v Randolph*, 466 Mich 532; 648 NW2d 164 (2002), in which the Court held that in order for an unarmed robbery to occur, the thief must use force or violence at the time of the taking, and that the use of force or violence after the taking is accomplished in order to retain the property does not elevate the completed larceny to an unarmed robbery. The Legislature amended the unarmed robbery statute to add the language “in the course of committing a larceny,” MCL 750.530(1), and defined this phrase to include acts of force or violence that occurred in the attempt to commit the offense, in the commission of the offense, “or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the property.” MCL 750.530(2).